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Pet Doors: A Little Known Gateway to Childhood Injury and Deaths

ORLANDO, FLORIDA – Matthew Ranfone was only two years old when he slipped out of his Orlando home, into an enclosed patio area and through a pool fence into the backyard pool. His parents found him minutes later floating face down. Matthew died 13 days later from the injuries sustained in the near drowning.

It's a scenario well-known to a handful of child injury specialists – especially those who study the morbidity data in warm-weather states. In fact, since 1996 there are nearly 100 documented cases of children endangered after exiting a home via a pet door. Nearly three-quarters resulted in injury or death. Mathew's mother, Carol Ranfone, had no idea at the time that her son could easily escape through the small opening, but she is determined to warn other parents.

This week, the Ranfone family launched a website, www.PetAccessDangers.org, to raise awareness of this danger and advocate for change in the industry.

"Our family had chosen to respond to Matthew's death by informing the public and working to ensure that pet doors are made safer," Carol Ranfone said. "Matthew didn't have a chance to grow up, but we hope that our advocacy will keep other children out of harm's way."

Dr. Timothy Flood, medical director of the Arizona Department of Health's Bureau of Health Statistics has compiled the largest statewide databank of fatal and non-fatal drowning incidents. His staff has been tracking drowning incidents in which a pet door was a factor for more than 15 years. Arizona, where backyard pools are common, has seen a steady stream of such incidents.

Sean Marrujo, for example, was nearly three years old when he crawled out of a pet door and fell into the family's backyard pool in Auwatuakee, Arizona. His mother found him at the bottom of the pool. His eight-year-old sister jumped in to save him, but Sean died from drowning in the April 2008 incident.

"It's a nationwide problem," says Flood. "And it's typical of sunny-weather states. We've had 26 incidents since 1993, at the rate of about one or two a year. It's a real issue."

The full scope of this problem, however, is unknown. Sources of childhood injury and death data – state medical examiners offices, coroners, the U.S. Product Safety Commission's surveillance systems, hospital emergency medicine centers – often do not document egress when an incident occurs outside the home. Instead, their reports focus solely on the cause of death or the nature of the injury. Two counties in California – Riverside and San Bernadino – and Maricopa County in Arizona are tracking egress data by using a Submersion Incident Reporting Form or a similar form that was created by the staff of the Loma Linda University Medical Center. There is no centralized or nationally accessible data source that tracks drowning and near drowning events by point of egress or method of access.

Safety Research & Strategies compiled its data from the U.S. CPSC, media reports, medical examiners' offices, child death review publications, criminal court neglect and abuse cases, injury prevention specialists, state health departments and the National Drowning Prevention Alliance.

"Based on our contacts with public health officials and child injury specialists, we know the problem is more widespread than our data suggest," says Sean Kane, SRS

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NHTSA Issues Improved Final Roof Crush Rule; Drops Preemption

WASHINGTON, D.C. – Not bad – considering. With a few variations, that's largely the reaction to the National Highway Traffic Safety Administration's final roof crush rule published earlier this month. Nearly four years after deciding to amend the antiquated standard, after howls of protest from automakers and consumer advocates, and after the Insurance Institute for Highway Safety substantially raised the bar to include roof a strength standard for a Top Safety Pick rating, the agency delivered a rule that was better than many expected.

The final version of the rule is notably different from its first proposal in August 2005 on four key points:

The new strength to weight ratio (SWR) for passenger vehicles with a Gross Vehicle Weight Rating of 6,000 pounds is 3.0;

The applicability of the standard now extends to vehicles in the 6,000 to 10,000, which will have to a meet a SWR of 1.5;

A two-sided roof test is required for all vehicles.

The provision to preempt state laws was dropped.

Also for the final rule, the agency maintained an intrusion limit of 5 inches of platen travel as well as adopting a headroom requirement, but the agency decided to require a headform positioning fixture instead of a test dummy.

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Pet Doors: A Little Known Gateway to Childhood Injury and Deaths

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president. "There have been individual researchers looking at local or regional data, but nobody has put it all together on a national basis. There are real obstacles to getting a clear picture – not only because reports don't mention the point of egress from the home. There are also privacy issues that tend to obscure an accurate count."

While only a handful of child injury researchers are aware of the link between pet doors and childhood injury and death, even fewer parents are aware of the dangers posed by them. The size of the opening appears deceptively small. Parents may believe that their child is safely contained inside the home. But an average medium pet door with a typical opening of 8 x 11 inches is recommended by manufacturers for use with pets up to 40 pounds. A 95th percentile, three-year-old male child weighs only 38 pounds and can easily pass through this opening.

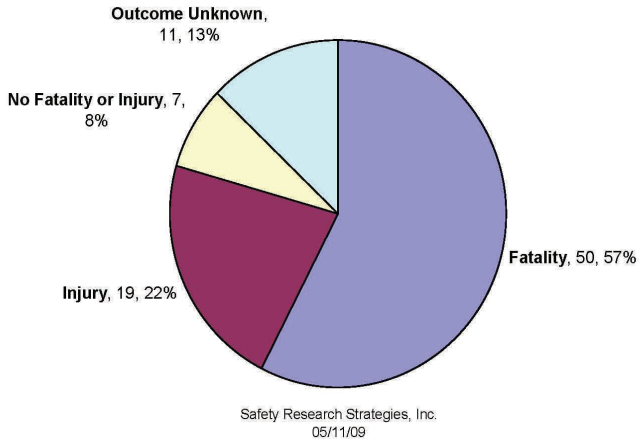
Through www.PetAccessDangers.org, Carol Ranfone hopes to spare other families from the pain her family has endured, and encourage the pet door industry to improve their designs. The website also urges public agencies, hospitals and medical examiners' offices to incorporate a coding system to provide more accurate data as to how a child may have reached the water or other hazard. This information is critical to understanding the true scope of the safety issues surrounding pet door products and the risk they pose to the public.

Safety advocates and injury prevention experts are mulling a variety of next steps to address the problem. Kane says that a multifaceted solution is needed that includes better data collection, improving secondary pool barrier requirements, prominent warnings from manufacturers, and improved dog door designs, such as those that use radio frequency technology to lock the door, except when the pet wants to enter or exit.

Flood says that better data is key to developing appropriate solutions.

"Looking at the age group of the victims is critical. It's the toddlers – one to two years – this is an extremely targetable group and it's going to help your marketing a safety message to an audience of young parents."

Deaths and Injuries Resulting from Known Pet Door Incidents



Others are looking to the pet door industry for a better-designed product. Critics say reasonable and economically feasible alternatives to the simple flap-style pet door closure exist, yet many companies are still marketing and selling these doors with no locking mechanism and without warnings. On May 23, 2008, the Ranfone family filed a wrongful death civil lawsuit against Radio Systems Corporation, one of the largest manufacturers of pet doors, marketed under the brand-name PetSafe.

Depositions taken in the case revealed that senior officials understood that children could get through their pet doors. In fact, one of their product lines, Staywell, markets some of its products thus: "The dog door locks in both directions preventing young children from leaving the home." They also conceded they knew of two incidents, going back to 2003, in which a child drowned after escaping through one of their products. They also conceded that it was possible to warn consumers about the possibility of small children using the pet doors, without any significant cost to the company. In fact, the company's Director of Quality Steven Ogden testified: "I think all manufacturers should warn of hazards that their product can cause regardless of the age that it could cause them to, but certainly if it's children or any age -- any age of people."

Nonetheless, David Anderson, director of the company's pet access strategic business unit, said that the company wouldn't consider adding a warning until the lawsuit concluded.

"Manufacturers, while quick to blame parents for a lack of supervision, are aware of the risk that pet doors pose to small children," said product safety attorney Henry Didier, who represents the Ranfone family. "These manufacturers are in a position to reduce or eliminate the risk before the consumer even purchases the product, and to date, they have not."

In the meantime, drowning prevention advocates are considering other preventative measures. In March, the Southern Nevada Health District proposed legislation that included language requiring that all pools be enclosed in a barrier or equipped with an alarm, but the legislation was not adopted.

"The pet door access is part of the puzzle," said Kristin Goffman, executive director for the National Drowning Prevention Alliance. "It's a weakness in the layers of protection that has to be addressed. We find that in some cases, people have forgotten the pet door even existed. It was disregarded as a risk."

The National Drowning Prevention Alliance believes that the best measure would be a requirement that all pools are enclosed in an isolation fence, so that unnoticed points of entry, such as pet doors, are not a factor. Maureen Williams, NDPA founder and communications manager for D& D Technologies, the maker of MagnaLatch, a magnetic pool gate latch, said that her company has known about the problems with pet doors for years and has often included a reminder in its yearly press release. Warnings, however, are inadequate, she said.

"It's a good idea, but warnings do more to protect the manufacturer from liability rather than to prevent the incident," she said.

But the NDPA agrees that thorough research into the problem should precede any solution. It is currently conducting its own research into parents' information and attitudes about children's swim lessons. NDPA members are also participating in another project in conjunction with the California chapter of the American Academy of Pediatrics to develop a handbook on drowning data collection.

"I don't think there will be any change in policy and messaging until we've done the research," Goffman said. "A second critical component of moving drowning prevention forward as these new issues are clarified are the engineers – who will take the ideas out there and bring fabulous new products into the marketplace. But the first step is research."

Juries in Three Automotive Defect Cases Find For the Plaintiffs

Juries in Georgia, Colorado and Texas recently delivered verdicts worth more than $46 million against Ford Motor Company and Nissan in three different defect cases. Ford lost in two separate cases involving an Explorer transmission defect and a seat-belt unlatch incident involving a Mercury Cougar. Nissan was found at fault in a crashworthiness case involving a 1995 Pathfinder. Below are summaries of the cases:

Mundy v. Ford Motor Company
A Dekalb County, Georgia jury found that Jessica Mundy's 2004 Explorer suddenly shifted from park to reverse and ran over her, causing permanent paralysis. The jury awarded Mundy, a 23-year-old accountant, $9.3 million in compensatory damages and $30.7 million in punitive damages. The case centered on a defect in the transmission known as a "false park," in which the driver shifts the into park and believes the vehicle is stable. After a delay, the truck shifts into reverse and drives backwards.

"There is a space between park and reverse that the gear can get hung up which can allow the vehicle to move back into reverse," explained Jeff Harris, of the Atlanta firm of Harris, Penn, Lowry, one of Mundy's lawyers.

Mundy was permanently injured after exiting her Explorer at a post office in Mcdonough, Georgia. She had placed the gear selector into the park position, then noticed the Explorer begin to move backwards. When she tried to reenter and stop the truck, it ran over her. "This has been a problem that Ford has been aware of for more than thirty years," said lawyer Steve Lowry. "Ford's own rules of design required them to take action on this problem and they have not done anything in almost thirty years."

During the trial, the jury heard evidence of 751 complaints regarding Ford vehicles shifting themselves into reverse after being seemingly stable in park. The jury also heard from three other individuals who were injured when their Explorers moved in reverse after each thought the vehicle was in park.

In April, NHTSA's Office of Defects Investigation opened a inquiry into park to reverse in 1.4 million 2002 – 2005 Ford Explorers. NHTSA based the Preliminary Evaluation on media questions about the issue during Mundy trial. The agency noted that it had 11 complaints alleging vehicle rollaways after the vehicle was shifted into park. Eight resulted in crashes; four resulted in injuries after the driver was struck by the vehicle. The agency received an additional 61 complainants alleging a failure of the gear shift lever mechanism while shifting from or to the park position.

Hoffman v. Ford Motor Company
In late April, a jury in a Denver U.S. District Court awarded $18 million to a Keenesburg, Colorado woman who was left a quadriplegic after the seat belt of the 1996 Ford

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California Tire Age Bill Advances; Four Other States Mull Bills

SACRAMENTO, CA – One of the nation's first laws to require tire dealers to disclose the age of each tire prior to sale or installation cleared an important hurdle in late April, when the California state legislature's Assembly Business and Professions committee passed it by a vote of 6 to 4.

Bill AB 496 was submitted by Assemblyman Mike Davis and sponsored by Sean Kane, president of Safety Research & Strategies, Inc, with support from American Center for Van and Tire Safety, American Federation of State, County, and Municipal Employees (ASFCME), Consumer Attorneys of California and Consumers for Auto Reliability and Safety.

The bill requires tire dealers to disclose the age of a tire to consumers in writing before the sale or installation of a tire. Along with the tire age, dealers must provide the following statement about the increased hazards of aged tires:

"Tires deteriorate with age, even if they have never or seldom been used. As tires age they are more prone to sudden failure that can cause a vehicle to crash. This applies also to the spare tire and tires that are stored for future use. Heat caused by hot climates or frequent high loading conditions can accelerate the aging process. Most vehicle manufacturers recommend that tires be replaced after six years, regardless of the remaining tread depth."

Dealers would be required to retain those sales records for three years. The penalty for violating the law is $250 per violation.

"This is the first step towards minimizing opportunities for vehicle crashes as a result of aged tires in the state of California. This public policy will neither burden businesses nor deny consumers the opportunity to have important information that can save their lives," said Assemblyman Davis.

Davis was moved to submit the bill after a staff member saw in a story about tire aging on ABC News' 20/20. The report, based on SRS' advocacy, featured the story of William Moreno, a 12-year-old from Los Angeles, who died in a rollover crash when a 12-year-old spare tire recently installed by a tire dealer suffered a tread separation. The 2008 investigative report, which became one of the most widely-viewed ABC News stories in 2008, also showed that tire dealers were selling "new" tires that were actually 6-10 years old.

"Right now the tire manufacturers, the vehicle manufacturers, and NHTSA are aware of the hazards associated with aged tires. But tire dealers and the public have largely been out of the loop. The lack of a systematic approach to educating and warning dealers continues to result in the aged tires being put into service and causing catastrophic crashes," Kane said.

The evolution to legislative action began in the 1980s, when German studies found a rise in tread/belt separations in tires more than six years old. In the early 1990s, most German automakers and Toyota warned consumers in owner's manuals that tires older than six years should only be used in an emergency and replaced as soon as possible. Then, in 2001, the tire trade associations—the Japanese Automobile Tire Manufacturers Association and British Rubber Manufacturers Association—began to develop consensus polices regarding tire aging.

By 2005, Bridgestone/Firestone issued a technical bulletin to its dealers advising them that tires should be inspected after 5 years and replaced after 10 —"even when tires appear to be usable from their external appearance or the tread depth may not have reached the minimum wear out." Five months later, Michelin, Continental-General and Cooper issued similar advisories.

NHTSA began to confront the tire age issue in August 2000, when Firestone ATX/Wilderness tires became the focus of a government investigation into rollover crashes involving Ford Explorers. The Congressional and media attention spurred Ford and the National Highway Traffic Safety Administration to conduct separate laboratory research on tire aging. Ford examined the material science behind tire aging. Using Ford's work as its basis, NHTSA attempted to develop a lab-based artificial aging test. Last summer, the agency issued a Consumer Advisory warning motorists about tire age and that summer heat, especially in hot climates, can take its toll on worn, old or improperly inflated tires leading to tread separations, crashes and rollovers."

Ford joined the chorus in 2005, concluding that, based on its tire

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Juries in Three Automotive Defect Cases Find For the Plaintiffs

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Mercury Cougar Coupe unlatched in a rollover crash. Erica Hoffman, 20, had previously settled with the driver of the vehicle and TRW, which manufactured the seatbelt.

The crash occurred on March 14, 2006, as Hoffman and the driver, Shannon Ovancara drove to Weld Central High School. The Cougar Coupe rolled four-and-a-half times, Hoffman was ejected from the vehicle when her seatbelt unlatched.

The jury deliberated for three and a half days before retuning a verdict. Ford was found to be 25 percent at fault and was responsible for $4.23 million of the judgment. Hoffman was represented by Randolph Barnhardt, of Barnhardt, Ekker & McNally LLP of Englewood Colorado.

Ford continues to claim that Hoffman wasn't wearing her seatbelt and says that it plans to appeal.

Perdue v. Nissan Motor Company
Earlier this month, an East Texas jury awarded $2,197,000 to Rebecca Perdue, a 63-year-old woman who suffered permanent injuries. The jury found Nissan totally responsible for Mrs. Perdue's injuries.

Perdue suffered extensive injuries to her legs and feet in a November 28, 2006 crash in Tyler, Texas. Perdue was driving a 1995 Nissan Pathfinder, when she was struck by a 2004 Hyundai Tiburon traveling 45-50mph. The Hyundai had swerved to avoid hitting a 2006 Toyota 4Runner that had failed to yield the right of way. The Hyundai struck the left front corner of Perdue's vehicle in a left frontal offset impact crash, driving the left front tire back through the firewall. The force destroyed the footwell, the floor pan and the toe board survival space area. Perdue suffered fractures to her right tibia, right fibula, and both ankles.

Todd Tracy and co-counsel Melissa Smith of the Dallas-based Tracy Law Firm produced evidence that the design of 1987-1995 Pathfinder was defective for not being able to protect the lower legs in frontal offset impacts. Nissan failed to conduct any frontal offset crash testing or any type of engineering analysis to evaluate the risks associated with lower leg injuries in frontal offset impacts. Nissan's own testing showed the automaker knew that its front wheel could drive into and through the firewall, toe board, foot well and floor pan area.

At trial, Tracy presented evidence of frontal offset testing dating back to 1969 from the experimental safety vehicle conferences. The research outlined how to design and protect the lower legs during frontal offset impacts. The design alternatives included strengthening the toeboard, footwell and floorpan area so that the survival space for the lower legs would not be destroyed. There were also designs to redirect and redistribute the crash load away from the lower leg survival space.

Tracy also argued that since 1971, vehicle manufacturers knew that frontal offset impacts were the most frequent type of frontal crash and that for nearly 40 years every vehicle manufacturer – except for Nissan, Toyota and Honda – have been conducting offset frontal research in search of ways to protect occupants' legs in that type of crash. GM, Ford, Chrysler, Mercedes, Volvo, British Leland, Alfa Romeo, Fiat, AMF, the U.S., Canadian and Australian government all had conducted research in this area. But Nissan did not conduct a frontal offset test until 2004.

NHTSA Prepares to Take the Rear View

WASHINGTON, D.C. – After years of resisting, the National Highway Traffic Administration has published an Advanced Notice of Proposed Rulemaking to amend the rearview mirror standard to actually include a performance standard for the rear view. The agency also solicited public comment on the state of current research and countermeasures that might assist it amending Federal Motor Vehicle Safety Standard 111 to eliminate blind zones.

The March rulemaking did not outline a possible performance standard, but presented the research NHTSA had done to date. The agency sought answers to 52 questions in seven different areas, including the scope of the problem, technologies for improving rear visibility, effectiveness, driver behavior, options for measuring rear visibility and countermeasure performance.

The Advanced Notice of Proposed Rulemaking is the culmination of years of advocacy from groups such as KIDS AND CARS, which has been collecting news accounts and raising public awareness about the problem of backovers since 1998. In 2007, the organization's lobbying led to the passage of the Cameron Gulbransen Kids Transportation Safety Act, also known as the K.T. Safety Act. The bill was named after 2-year-old Cameron Gulbransen, who was killed when his father, a pediatrician from Long Island, accidentally backed over him, because the blind zone behind his SUV made the toddler impossible to see.

The legislation required NHTSA to initiate a rulemaking within a year for a rearward visibility standard that would expand the required field of view to enable drivers to detect areas behind the motor vehicle. The standard could prescribe different requirements for different types of motor vehicles, which could be met by the addition of mirrors, sensors, cameras, or any other technology to expand the driver's field of view. The bill required NHTSA to complete the rulemaking within three years of the date of enactment.

The law forced the agency to address a significant design flaw – especially in SUVs – which results in 3,000 incapacitating injuries and nearly 300 fatalities annually in backover incidents. (The agency noted that a disproportionate number of victims of backovers are children under 5 years old and adults 70 or older.) Previously, NHTSA declined to collect data on the problem, because most of these pedestrian-vehicle conflicts occurred in driveways and parking lots, rather than on public roads.

"We're happy that NHTSA has met all the deadlines in the act and we really look forward to a regulation that will increase the visibility when you are backing up your vehicle," says Janette Fennell, founder and president of KIDS AND CARS.

The sheer volume of questions is a good sign that the agency wants to take an in-depth look at all available information before crafting a standard, she added. But, Fennell said, buried in the text were some worrying signs. In the accompanying cost-benefit analyses, the agency considered different application scenarios, including applying it only to light trucks, based on data showing that pick-up trucks and SUVS were over represented in the injury and fatality data.

"I was surprised to see some sidestepping," Fennell said. "We shouldn't pick and choose. Whatever rear visibility standard is written, we need to ensure it covers all passenger vehicles."

Backovers occur in incidents involving sedan-type vehicles more than 50 percent of the time, she said. Fennell was also disappointed that the agency research failed to consider the full range of economic benefits bestowed by a wider rear view.

"They totally ignored the cost savings from preventing bumper damage after you reduce the number of bushes, fences and poles people back into. That needs to be part of the calculation."

The current standard, established in 1976, covers requirements for the use, field of view, and mounting of

(*Cont. on p. 6*)

NHTSA Issues Improved Final Roof Crush Rule; Drops Preemption

(*Cont. from p. 1*)
NHTSA said that it was basing the headroom requirement on new data that established a statistically significant relationship between intrusion and injury for belted occupants.

The new roof crush standard will be phased in over a three-year period, beginning in September 2012.

The proposed preemption provision – a widespread inter-agency practice during the administration of President George W. Bush – drew the ire of several groups. Plaintiffs' attorneys argued it would abrogate consumers' rights. States' attorneys general interpreted preemption as a usurpation of state's rights. Congress members chastised the agency saying that it had no authority to circumvent its intent in passing safety laws.

In the final rule, the agency gave its decision to drop the provision a passing mention: "We have reconsidered the tentative position presented in the NPRM. We do not foresee any potential State tort requirements that might conflict with today's final rule. Without any conflict, there could not be any implied preemption."

Don Slavik, an attorney with Habush, Habush & Rottier, S.C. in Milwaukee, was among a group that coordinated the objections to preemption. Slavik credits the team of lawyers and safety advocates for pressing the administration and explaining the fallacy of preemption to agency officials. The opposing philosophies of the new Obama administration didn't hurt either, he said. "Attorneys and consumer advocates assisted in getting out the word and enlisting the others to comment," he added. "Of particular importance were comments from legislators and senators saying that they did not intend to preempt in this area and NHTSA was wrong. If you persevere, Congress warned that they would re-legislate specifically in this area."

As for the rule itself, close observers, such as Don Friedman, co-inventor of the Jordan Rollover System, a repeatable rollover test device, said that the 3.0 strength-to-weight ratio would actually result in automakers building stronger roofs. Variability in the test, coupled with variability in roof strengths among the same models built at different plants, means that automakers will have to build in an ample margin to ensure their vehicles pass the compliance test. Ford, in particular, told the agency that the variability could be as much as 30 percent.

"If you understand that, then the standard as written is really a standard of 3.9," he said. "It is also the standard we predicted from JRS dynamic testing. This is a standard that will reduce the rollover injury rate by half."

An IIHS spokesman also deemed it "a pretty good standard."

"It's hard to know right now how this plays out in terms of what the automakers will actually have to do, but clearly roofs will get much stronger," said Russ Rader of the IIHS. "Our main criticism is that the phase-in is just way too long, because we've heard from some automakers they will meet our 4.0 very quickly. Also, NHTSA still woefully underestimated the benefits of the standards, but at least they got past that and made it more stringent than we thought it was going to be."

Several months ago, the institute announced that beginning in 2010, automakers who want IIHS's coveted Top Safety Pick designation would have to build vehicle roofs with a 4.0 strength-to-weight ratio – far above the timid 2.5 ratio the government has been contemplating for its amended standard. The IIHS estimated that vehicles that could meet this new strength standard could reduce injury risk to occupants by 40-50 percent. In January, the insurance advocacy group informed manufacturers about its new requirement for vehicle roofs to win its highest honor.

The entity most publicly disappointed with the requirements of the new rule was Public Citizen, which released a statement jabbing the rule as falling "far short of mandating vehicle improvements that will significantly reduce the 10,500 annual fatalities from rollover crashes." Public Citizen criticized the old 1.5 SWR for larger vehicles as inadequate but its biggest beef was the standard's continued reliance on a quasi-static test. The advocacy group accused NHTSA of ignoring the 2005 congressional intent to consider a dynamic test that could mimic real-world conditions.

NHTSA said that it developed its upgrade with the results of their research program in mind. The agency testing program included full vehicle dynamic rollover testing, inverted vehicle drop testing, and comparing inverted vehicle drop testing to a modified FMVSS No. 216 test. After considering the results of the testing, the agency concluded that the quasi-static procedure provided enough of a suitable representation of the real-world roof dynamic loading conditions. Rollovers were too complex and chaotic to develop a dynamic test suitable for a safety standard.

"NHTSA agrees, however, with pursuing a dynamic test as our ultimate goal. We would like to have one for rollover crashes just as we do for front and side crashes. Unfortunately, we cannot adopt or even propose one now because of issues related to test repeatability, a dummy, and lack of injury criteria. We are pursuing further research for a dynamic test, but we expect that it will take a number of years to resolve these issues. In the meantime, we do not want to delay a significant upgrade of FMVSS No. 216 that will save 135 lives each year," the agency said.

Friedman was sanguine about another delay in adopting a dynamic test. He has made several public demonstrations of how the JRS can measure the injury and ejection potential of vehicles in rollovers and can definitively identify vehicle safety component defects and their causal relationship to death and injury in accidents. He has also been presenting the Jordan Rollover System test data to NHTSA officials since 2003. With the final rule published, Friedman is looking ahead.

"It's all good. I think the next thing is the dynamic test as the NCAP (New Car Assessment Program) test," he said.

California Tire Age Bill Advances; Four Other States Mull Bills

(*Cont. from p. 3*)
aging research, a 6-year replacement "recommendation" for tires, regardless of tread, was needed. Days later, DaimlerChrysler announced that they, too, were adding the 6-year warning.

While the National Highway Traffic Safety Administration has yet to translate its tire age research into a policy, four states –New York, New Jersey, California and Hawaii have jumped into the breach. State lawmakers are in the process of considering a variety of consumer remedies. The California legislation focuses on consumer disclosure, as does a pending regulation in New Jersey, where the state's Division of Consumer Affairs is accepting public comment on a regulation mandating disclosure of tire age. A measure in Hawaii would prohibit the sale of tires older than six years. The New York assembly is mulling a law that would force manufacturers to mold the date of manufacture on both sides of the sidewall in a non-coded fashion.

See SRS' Tire Aging Animation and view Sean Kane's testimony before the CA Assembly on AB496 on the Tire Aging Advocacy section of our website.

Tire Dealers Freak Out Over Consumer Education Program

WASHINGTON, D.C. – Tire retailers are in the midst of an oh-my-gosh-the-sky-is-falling meltdown over a National Highway Traffic Safety Administration tire maintenance public education program. Specifically, the retail arm of the tire industry is quivering over the possibility that groups outside of the industry would be tapped to run it.

The public tire maintenance campaign is a small part of a tire fuel efficiency program, included as an amendment in the Energy Bill of 2007. The inclusion of these requirements in the bill was considered in many industry quarters as a "triumph" for the Rubber Manufacturers Association, which lobbied hard for them. The amendment requires NHTSA to establish through the rulemaking process a tire fuel efficiency rating system and test specifications to assess tire fuel efficiency. Besides the tire maintenance consumer education campaign, the public outreach effort includes a requirement to provide tire fuel efficiency information to consumers, via the internet and retail locations.

NHTSA has not yet published a notice of proposed rulemaking, but it is expected to be issued soon, says Karen Aldana, a NHSTA spokeswoman

"Once the notice comes out, everyone will have a chance to comment on it and raise their concerns," she said.

That hasn't stopped influential voices in the tire retail industry from hyperventilating over an apocalyptic future in which consumers do not receive Tire Industry Association-sanctioned information on tire safety. Roy Littlefield, the TIA's executive vice president, kicked off the panic with a lengthy screed in *Modern Tire Dealer*, published in late March.

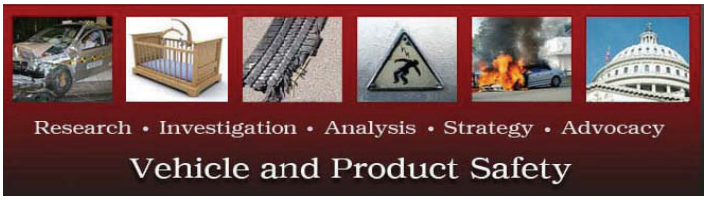
""Let me ask you a question: Would you want your customers being educated about tires by trial lawyers? How about by so-called "safety experts" (I use the quotes here because we all know they are really not as concerned with true safety as they are with feathering their own nests, or the nests of their "birds of a feather," the trial lawyers)? Would public watchdog groups be more to your liking? Or, how about environmental extremists? Better yet, how about if the government did it? "I don't think I'm going out on a limb here by assuming that the answers to these questions would be a resounding "No!" But, that's essentially what could happen if we don't come together as an industry and unite NOW."

Littlefield then issued a call to arms for tire retailers to seize control of the public education program to maintain the status quo.

Tire Review followed up with a less hysterical *Viewpoints* piece by Jim Smith, who conceded Littlefield's main point that Very Bad Things Will Happen if consumers advocates get their filthy mitts on the tire maintenance education program. He also advocated for the government to contract the program to the TIA, because, "It has the neutrality and the industry representation to do a fair job, and it has a basic plan already in place called TIRES – the tire check-off program it first offered some five years ago. With government money (because the program is legislatively mandated) and the right hires (TIA will need to staff up), TIA could do an admirable and certainly industry-friendly job."

Singled for special derision was

(*Cont. on p. 7*)



Safety Research & Strategies Launches New Website

REHOBOTH, MA – Safety Research & Strategies is better looking than ever. The company has launched an updated version of its website, with improved graphics, animation and video clips. We've also beefed up our content and added a search option.

Read about the tire retailers' freak-out over a tire safety consumer program (with bonus personal attacks on Sean "Old Tires Are Death" Kane); or the motorcycle crash causation boondoggle; or a new tire age bill in California. It's all on our new blog – featuring news, analyses and opinions on the most pressing issues in auto and consumer product safety. Our blog will be updated weekly, so become a regular visitor.

Click on our Advocacy page and learn more about SRS's continuing work on tire aging, defective tire valve stems, and radio frequency identification tags. SRS has been at the forefront of the tire age issue and our advocacy has raised the issue's profile in the national media. The news stories have been instrumental in a spate of new tire age regulations under consideration in five states.

Get the scoop -- go to www.safetyresearch.net

NHTSA Prepares to Take the Rear View

(*Cont. from p. 4*)

motor vehicle rearview mirrors for rear visibility and applies to passenger cars, multipurpose passenger vehicles, trucks, buses, school buses and motorcycles. What constitutes a performance standard for the view is based on Japanese regulation, Article 44, which merely requires that there be rearview mirrors that enable drivers to check the traffic around the left-hand lane edge and behind the vehicle from the driver's seat. The regulation requires that the driver be able to ''visually confirm the presence of a cylindrical object 1 m high and 0.3 m in diameter (equivalent to a 6-year-old child) adjacent to the front or the left-hand side of the vehicle (or the right-hand side in the case of a left-hand drive vehicle), either directly or indirectly via mirrors, screens, or similar devices.''

As part of the Advanced Notice of Proposed Rulemaking, the agency presented some its research to date, which reached the startling conclusion that there is an association between the blind zone measured in a wide area and backing risk in crashes and that the larger the blind area, the higher the risk of a backing crash.

The agency has also evaluated some of the current rearview technology, often marketed as parking aids. The most expensive was the rearview camera, which was estimated to cost consumers between $159 and $203 per vehicle, or as low as $88 if the vehicle already has a display. NHTSA estimated the cost of equipping a 16.6 million vehicle fleet with camera systems is estimated at $2.3 to $3.0 billion. The net cost per equivalent life saved for camera systems, under different application scenarios, and at 3 and 7 percent discount rates, ranged from $13.8 to $72.2 million

Tire Dealers Freak Out Over Consumer Education Program

(*Cont. from p. 6*)

Safety Research & Strategies President and founder Sean Kane. Littlefield veiled his reference to Kane as one of the "so-called tire experts." Smith was more direct, dubbing him Sean "Old Tires Are Death" Kane.

Kane says that he approached Littlefield in 2003 when he first started researching the aged tire issue. Kane's concern was the tire dealers were not getting appropriate guidance from manufacturers and were likely to end up unknowingly causing harm to consumers. Littlefield and the TIA weren't interested, Kane said.

Instead, tire retailers have occupied themselves with building a bulwark against the slowly spreading consensus that tire age matters. Despite wave after wave of tire age recommendations from a few individual tiremakers and many major vehicle manufacturers, collectively, tiremakers opposed and continue to oppose efforts to develop a tire aging recommendation. They successfully fought off a 2003 proposed NHTSA regulation to address aging effects. They have countered vehicle manufacturers tire age warnings with statements averring that there is no scientific support for a 6-year expiration date on tires. In 2006, the Rubber Manufacturers Association submitted to NHTSA the results of a scrap tire survey claiming chronological age doesn't determine tire service life.

And now Littlefield is pushing for the TIA to lobby for states to enact tire inspection laws that the trade group would write and testify for.

In the meantime, one has to give the tire dealers their props – they have not only ferreted out the vast left-wing conspiracy to educate consumers about tire aging they have published their own strategy to take control of a government program and make it "industry friendly."

Consumer Product Safety Improvement Act Off to Rough Start

WASHINGTON – When the Consumer Product Safety Improvement Act was signed into law last August, proponents characterized it as the most significant upgrade to the U.S. Consumer Product Safety Commission's powers since the agency was established in 1972. But, according to a new report, the implementation of these sweeping changes "is not going well."

The April report, compiled by the Congressional Research Service, describes an agency overwhelmed with multiple statutory deadlines," and a business community beset by confusion over the new lead limits for products intended for children 12 and under. Small businesses, and consignment and thrift stores have had the toughest time understanding how the law applies to their older inventory, but other industries have also been paralyzed. The report noted that despite the CPSC's attempts to clarify the new regulations, fear of incurring costly penalties for violating the CPSIA, or of enforcement actions by state attorneys general, or liability lawsuits are stifling sales of older merchandise.

Alarmed by a record 448 recalls last year, Congress passed the Consumer Product Safety Improvement Act this summer. It requires the CPSC to expand its regulation of children's products and to toughen its oversight of imported products. It also gave the CPSC more recall authority, more money and staff – raising the funding from $80 million in 2008 to $136 million in 2014 and increasing fulltime staffing from 420 to 500. With these tools, CPSC was expected to improve children's product safety, import safety, enforcement and administrative procedures. Instead, the agency finds itself besieged by industry requests to delay implementation and unable to claim absolute authority over its decisions to create a more orderly transition to the new rules.
The broadest and most troublesome provisions ban paint and children's products that contain more than a minimal amount of lead or phthalates (a plasticizer added to polyvinyl chloride [PVC] to make it more flexible) and expanded the definition of children's products to include all goods that are primarily intended for those under the age of 12.

The ATV industry, for example, is grappling with the Commission's recent decision to allow them to sell older models of youth ATVs that exceed the strict lead limits. The Commission's only two members granted a two-year stay of enforcement, to give companies time to unload their inventory. The industry had argued for relief, saying that the lead in the non-compliant models is necessary for durability and to prevent corrosion and that it is found in components that children are unlikely to come in contact with.

They had pleaded for time to design and test models that would contain less lead, but many are reluctant to accept the agency's response as definitive. Trade organizations fear that the stay does not shield them sufficiently from liability lawsuits or other state and federal actions and are now looking for Congress to amend the law.
The act empowers state attorneys general to enforce the CPSIA, meaning they could ignore the commission's stay and prosecute a retailer for violating the law. The CPSC has no authority over attorneys general to require that they honor any of the commission's exemptions or temporary suspensions.

Republican Chairman Nancy Nord famously lobbied against most of the provisions of the act, such as those that would expand the agency's staff and budget. She also objected to the ban on lead in children's products, calling it impractical, and asked congress to strike the portion of the bill allowing attorneys general to prosecute violators. In attempting to mediate between panicked industries and fast-moving deadlines, Nord has repeatedly told trade groups that the CPSC cannot amend the act and has complained about its prescriptive nature.

In January, the Motorcycle Industry Council also sought a temporary final rule to exclude a class of materials found in motorcycles so that those products would not be in violation of the CPSIA. But the CPSC's General Counsel responded that the agency did not have the authority, under the act, to grant it. "Currently, dealers around the nation say they have taken roughly $100 million worth of child-sized bikes off showroom floors. Dealers fear stiff fines for selling non-compliant products—various components (including battery terminals and tire stems) exceed the new lead limits," the report said.

Other manufacturing organizations also got a glass-half-full response to their requests for relief. A group led by the National Association of Manufacturers (NAM) petitioned the agency to delay the February 10 effective date and issue compliance guidance. Instead the commission offered "limited relief" from enforcement of testing and certifications for one year for manufacturers and importers of regulated products, including products intended for children. But the NAM coalition protested that the enforcement stay only confused the issue, because the enforcement stay did not exempt them from complying with the CPSIA requirements, and still left manufacturers open to prosecution.

The agency also tried to better explain the duties and responsibilities of re-sellers of children's products and ended up sowing more confusion. The January Guidance Intended for Resellers of Children's Products Thrift and Consignment Stores attempted to emphasize that the commission's enforcement priority was manufacturers and reiterated that the CPSIA does not require resellers to test their children's products for compliance on lead limits. But the agency also said: "However, resellers cannot sell children's products that exceed the lead limit and therefore should avoid products that are likely to have lead content, unless they have testing or other informa-

(*Cont. on p. 8*)

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Consumer Product Safety Improvement Act Off to Rough Start

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tion to indicate the products being sold have less than the new limit. Those resellers that do sell products in violation of the new limits could face civil and/or criminal penalties."

In the meantime, several members of Congress, including Congressman John D. Dingell, chairman emeritus of the House Committee on Energy and Commerce Chairmen and Senators John D Rockefeller and Mark L. Pryor,and Representatives Henry A. Waxman and Bobby L. Rush, the Subcommittee Chairmen of the Senate and House committees responsible for overseeing the CPSC have attempted to sort it out, sending letters to the agency demanding that it act quickly to dispel the confusion and address the implementation issues. The latter four also wrote to President Obama blaming Nord for mishandling the CPSIA and strongly suggesting new leadership was needed. Despite this, says the congressional report, "it is still far from clear whether the problem is with the CPSIA itself or with the manner in which the CPSC is administering it. And, by the same token, it is uncertain whether the agency could resolve many of the issues itself, or if it is wholly a matter for Congress to decide."

President Barack Obama's choice to replace Nord, Inez Moore Tenenbaum, will inherit these problems if the Senate confirms her nomination. The former South Carolina education superintendent is likely to have more allies on the commission. Under the CPSIA, the body will expand to five members. Obama has also nominated Robert Adler, a professor legal studies at the University of North Carolina, an advisor to former commission members and a member of Consumers Union's board of directors, to

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